

Hearing Date and Time: July 22, 2010 at 10:00 a.m. (Eastern Daylight Time)
Objection Date and Time: June 7, 2010 at 4:00 p.m. (Eastern Daylight Time)

HONIGMAN MILLER SCHWARTZ AND COHN LLP

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Attorneys for Defendants Affinia Group Holdings, Inc.,
Affinia Canada Corp., and Brake Parts, Inc.,

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In Re

DELPHI CORPORATION, et al.,

Debtors.

Chapter 11

Case No. 05-44481 (RDD)

Hon. Robert D. Drain

-----X
DELPHI CORPORATION, et al.,

Plaintiffs,

Against

**AFFINIA GROUP HOLDINGS, INC.,
AFFINIA, AFFINIA CANADA CORP.,
AFFINIA GROUP, AFFINIA CANADA,
BRAKE PARTS, INC., ITAPSA S.A. DE C.V.
AND WIX FILTRATION
PRODUCTS EUROPE**

Defendants.
-----X

Adv. Pro. No. 07-02198 (RDD)

**NOTICE OF MOTION OF AFFINIA GROUP HOLDINGS, INC., AFFINIA CANADA
CORP., AND BRAKE PARTS, INC. TO: (A) VACATE CERTAIN PRIOR ORDERS OF
THE COURT; (B) DISMISS THE COMPLAINT WITH PREJUDICE; OR (C) IN THE
ALTERNATIVE, TO DISMISS THE CLAIMS AGAINST CERTAIN DEFENDANTS
NAMED IN THE COMPLAINT AND TO REQUIRE PLAINTIFFS TO FILE A MORE
DEFINITE STATEMENT**

PLEASE TAKE NOTICE THAT:

Upon the annexed motion, dated April 29, 2010, Defendants Affinia Group Holdings, Inc., Affinia Canada Corp., and Brake Parts, Inc., (each a “**Defendant**,” collectively, “**Affinia**”), through their attorneys, Honigman Miller Schwartz & Cohn LLP, filed their *Motion to (A) Vacate Certain Prior Orders of the Court; (B) Dismiss the Complaint with Prejudice; (C) Dismiss the Complaint Against Certain Defendants; or (D) In The Alternative, Require Plaintiffs to File a More Definite Statement* (the “**Motion**”).

The Motion seeks entry of an order to (A) vacate certain prior orders of the Court; (B) dismiss the complaint with prejudice; (C) dismiss the complaint against certain defendants; or (D) in the alternative, require plaintiffs to file a more definite statement, as more fully set forth in the Motion. A hearing, with respect to the Motion will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, of the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on **July 22, 2010 at 10:00 a.m. (Eastern Daylight Time)**, or as soon thereafter as counsel may be heard.

A copy of the Motion may be obtained by (a) contacting the attorneys for the Defendants, Honigman Miller Schwartz and Cohn LLP, 660 Woodward Avenue, 2290 First National Building, Detroit, Michigan 48226 (Attn. I.W. Winsten, Esq., Judy B. Calton, Esq., Douglas Salzenstein, Esq. and Marcia Bennett Boyce, Esq.), Telephone: (313) 465-7000; (b) accessing the Court’s website at <http://www.nysb.uscourts.gov> (please note that a PACER password is needed to access documents on the Court’s website); (c) viewing the docket of these cases at the Clerk of the Court, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004; or (d) accessing the public website maintained by the Debtors’ court-appointed claims and noticing agent in these cases at: www.kccellc.net

The deadline to file any objections and responses to the Motion is **June 7, 2010 at 4:00 p.m. (Eastern Daylight Time)** (the “**Objection Deadline**”).

Objections and responses, if any, to the Motion must be in writing and must (a) conform to the Bankruptcy Rules, the Local Rules of the Bankruptcy Court for the Southern District of New York, and any case management orders in these chapter 11 cases, (b) set forth the name of the objecting party, the nature and amount of claims or interests held or asserted by the objecting party against the Debtors’ estates or property, and (c) set forth the basis for the objection and the specific grounds therefore.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court’s filing system, and (b) by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at www.nysb.uscourts.gov), and served in accordance with General Order M-242, and on (i) Honigman Miller Schwartz and Cohn LLP, Attn. I.W. Winsten, Esq., Judy B. Calton, Esq., Douglas Salzenstein, Esq. and Marcia Bennett Boyce, Esq., 660 Woodward Avenue, 2290 First National Building, Detroit Michigan 48226; (ii) the Debtors, DPH Holdings Corp. (f/k/a Delphi Corporation, et al.), Attn: John Brooks, 5725 Delphi Drive, Troy, Michigan 48098; (iii) Butzel Long, Attn: Cynthia J. Haffey, Esq., 150 W. Jefferson Avenue, Suite 100, Detroit, Michigan 48226; (iv) Butzel Long, Attn: Eric Fisher, Esq., 380 Madison Avenue, 22nd Floor, New York, New York 10017; (v) Latham & Watkins, attorneys for The Official Committee of Unsecured Creditors, Attn: Mark A. Broude, Esq. and Robert J. Rosenberg, Esq., 885 Third Avenue, New York, New York 10022 and Warner Stevens, L.L.P., Attn: Michael D. Warner, Esq., 301

Commerce Street, Suite 1700, Fort Worth, Texas 76102; (vi) the Office of the United States Trustee for the Southern District of New York, Attn: Alicia M. Leonhard, Esq., Tracy Hope Davis, Esq. and Brian Masumoto, Esq., 33 Whitehall Street, 21st Floor, New York, New York 10004, so as to be received no later than the **Objection Deadline**.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing. Failure to appear at the Hearing may result in relief being granted or denied upon default.

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Defendants Affinia Group Holdings, Inc.,
Affinia Canada Corp., and Brake Parts, Inc.,

Dated: April 29, 2010

By: /s/ Judy B. Calton
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HONIGMAN MILLER SCHWARTZ AND COHN LLP

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Attorneys for Defendants Affinia Group Holdings, Inc.,

Affinia Canada Corp., and Brake Parts, Inc.,

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In Re	:	Chapter 11
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DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	Hon. Robert D. Drain
	:	
-----X		

DELPHI CORPORATION, et al.,	:	
	:	
Plaintiffs,	:	
	:	
Against	:	
	:	
AFFINIA GROUP HOLDINGS, INC.,	:	Adv. Pro. No. 07-02198 (RDD)
AFFINIA, AFFINIA CANADA CORP.,	:	
AFFINIA GROUP, AFFINIA CANADA,	:	
BRAKE PARTS, INC., ITAPSA S.A. DE C.V.	:	
AND WIX FILTRATION	:	
PRODUCTS EUROPE	:	
	:	
Defendants.	:	
-----X		

**MOTION OF AFFINIA GROUP HOLDINGS, INC., AFFINIA CANADA CORP.,
AND BRAKE PARTS, INC. TO: (A) VACATE CERTAIN PRIOR ORDERS OF THE
COURT; (B) DISMISS THE COMPLAINT WITH PREJUDICE; OR (C) IN THE
ALTERNATIVE, TO DISMISS THE CLAIMS AGAINST CERTAIN DEFENDANTS
NAMED IN THE COMPLAINT AND TO REQUIRE PLAINTIFFS TO FILE A MORE
DEFINITE STATEMENT**

Defendants Affinia Group Holdings, Inc., Affinia Canada Corp., and Brake Parts, Inc., (each a “**Defendant**,” collectively, “**Affinia**”), through their attorneys, Honigman Miller Schwartz & Cohn LLP, for their Motion to (A) vacate certain prior orders of the Court; (B) dismiss the complaint with prejudice; (C) dismiss the complaint against certain defendants; or (D) in the alternative, require plaintiffs to file a more definite statement, rely on their Memorandum of Law in Support of Motion of Affinia Group Holdings, Inc., Affinia Canada Corp., and Brake Parts, Inc. to: (A) Vacate Certain Prior Orders of the Court; (B) Dismiss the Complaint with Prejudice; or (C) In the Alternative, to Dismiss the Claims Against Certain Defendants Named in the Complaint and to Require Plaintiffs to File a More Definite Statement (the “Memorandum of Law”) filed contemporaneously herewith and the following exhibits:

- A. Declaration of Patrick Manning dated March 29, 2010;
- B. Excerpted pages 21-24 of the Transcript of the March 19, 2008 hearing;
- C. Excerpted pages 11-12 of the Transcript of the April 30, 2008 hearing;
- D. Excerpted page 6 of the Transcript of the October 22, 2009 hearing.
- E. Declaration of Patrick Manning dated April 16, 2010;
- F. Excerpted pages 12-13 of the Transcript of the April 1, 2009 hearing;
- G. Excerpted pages 1-11 of the Transcript of the August 16, 2007 hearing; and
- H. Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §547 and 550

(Exhibit to D. 1. 7 in Adv. Pro. No. 07-02198).

WHEREFORE, Defendants seek an order:

- A. Vacating the interlocutory Extension Orders’ pursuant to the Court’s discretionary authority because: (i) Plaintiffs’ intentional failure to provide Affinia with notice of the motions seeking entry of the Extension Orders violates due process and renders the Extension Orders void and unenforceable against Affinia; (ii) cause did not exist to extend the time for service of the complaint; and/or (iii) the Complaint was improperly filed under seal pursuant to 11 U.S.C. §107;

- B. Dismissing with prejudice the Complaint against Defendants, pursuant to Fed. R. Civ. P. 12(b)(6), made applicable by Fed. R. Bankr. P. 7012(b), on the ground that it: (a) is barred by the 2-year statute of limitations; and/or (b) does not comply with the pleading requirements of *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009);
- C. Dismissing “Affinia,” “Affinia Group” and “Affinia Canada” because they are not persons or corporations, do not exist and, therefore, cannot be sued;
- D. In the alternative, dismissing the Complaint with prejudice on the grounds that it is barred by laches, judicial estoppel and res judicata;
- E. In the alternative, dismissing the claims against those of the Defendants which received less than \$250,000 in aggregate transfers and Affinia Canada Corp. with prejudice because Debtors abandoned avoidance actions against parties receiving less than \$250,000 in aggregate transfers and actions arising from “payments to foreign suppliers;”
- F. In the alternative, as to any Defendants which are not dismissed, ordering Plaintiffs to file a more definite statement with respect to its Complaint; and
- G. For such other and further relief as is proper and just.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Defendants Affinia Group Holdings, Inc.,
Affinia Canada Corp., and Brake Parts, Inc.,

By: /s/ Judy B. Calton

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Dated: April 29, 2010

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